

2
No. 10654

United States
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,
vs.

PUGET SOUND POWER AND LIGHT COM-
PANY, a corporation,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division

FILED

FEB 29 1944

PAUL B. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States
For the Western District of Washington
Northern Division

No. 530

UNITED STATES OF AMERICA,
Petitioner,

v.

CERTAIN PARCELS OF LAND IN RENTON,
COUNTY OF KING, STATE OF WASH-
INGTON,

MIKE N. SARGENT and JANE DOE SARGENT;
his wife;

* * * * *

CITY OF RENTON, a municipal corporation;
COUNTY OF KING, a municipal corporation;
STATE OF WASHINGTON;

ALSO UNKNOWN OWNERS AND ALL PER-
SONS UNKNOWN CLAIMING ANY
RIGHT, TITLE OR INTEREST IN THE
PROPERTY HEREIN DESCRIBED, OR
ANY PORTION THEREOF,

Respondents.

PETITION IN CONDEMNATION

To the Honorable Judge of the United States
District Court for the Western District of Wash-
ington, Northern Division:

The United States of America, petitioner herein,
by F. P. Keenan, Special Assistant to the Attorney

General, and Frank Pellegrini, Special Attorney, Department of Justice, [2] acting under the instructions of the Attorney General of the United States and at the request of Herbert Emmerich, Commissioner of the Federal Public Housing Authority of the United States of America, respectfully shows as follows.

I.

This is a suit of a civil nature brought by the petitioner under the authority of and pursuant to the provisions of the Act of Congress of August 1st, 188, 25 Stat. 357 (U.S.C. Title 40, Sec. 257); the Act of February 26th 1931, 46 Stat. 1421 (U.S.C. Title 40, secs. 258 (a) to 258 (e); the Act of October 14th, 1940 (Public No. 849, 76th Congress), as amended, and Executive Order No. 9070, dated February 24, 1942, the Act of March 27, 1942 (Public Law No. 507, 77th Congress), and Executive Order No. 9150, dated April 28, 1942, funds having been appropriated by the Act of May 24, 1941 (Public No. 73, 77th Congress), and under the further authority of the declaration of taking dated June 1, 1942, executed on behalf of the United States of America, by Herbert Emmerich, Commissioner of the Federal Public Housing Authority of the United States of America, filed simultaneously in this Court with the filing of this petition.

II.

The Commissioner of the Federal Public Housing Authority of the United States of America has selected for acquisition by the United States of

America the land hereinafter described, and has designated and determined that said lands, subject to a transmission line easement running northerly and southerly along the eastern side of the site; also subject to the right-of-way for State Road #2, known as Sunset Highway, as shown on the plat entitled "Land Being Acquired for Defense Housing Project, Renton, King County, Washington, WASH-45058, and WASH-45134, dated May 25, 1942." [3] as set forth in the declaration of taking, on file herein, is suitable and necessary for public use, to-wit, in order to provide housing for persons engaged in national defense activities, and their families, in those areas or localities in which the President of the United States has found an acute shortage of housing exists or impends, which would and does impede national defense activities, and that such housing would not be provided by private capital when needed.

III.

In accordance with the provisions of Section 1 of the Act of October 14th, 1940 (Public 849, 76th Congress,) the President of the United States of America has found that an acute shortage of housing exists in the area or locality in and about King County, State of Washington, which impedes the national defense activities, and has found further that such housing would not be provided by private capital when needed.

IV.

The purposes for which petitioner is taking said land hereinafter described, including all buildings

and improvements thereon, if any, all appurtenances thereto and all interests therein, are necessary and constitute a public use, and the use to which said property is to be applied is a use authorized by law, and no part of said land has heretofore been appropriated for public use by said petitioner.

V.

The estate or interest in and to said land herein-after described, which petitioner intends and seeks to take, acquire, condemn, hold, and own by this proceeding, is that of owner in full fee simple title, subject, however, to the transmission line easement running northerly and southerly along the eastern side of the site; also subject to the right-of-way for State Road No. 2, known as Sunset [4] Highway, as set forth in the declaration of taking on file herein, free and clear and discharged from all liens, encumbrances, servitudes, easements, charges, demands, claims, restrictions and covenants whatsoever.

VI.

The land to be taken and condemned in this proceeding is a tract containing 283.034 acres, more or less, lying and being in the County of King, State of Washington, and described as follows:

Being a portion of Block 7 and 8, all of Block 12, all of Block 13, and all of Blocks 16, 17, 18 in the Plat of Rainier Acres, King County, Washington.

Also:

A portion of the Northwest quarter of Section 9, T 23 N, R 5 E, Willamette Meridian, and a portion

of the Southwest quarter of Section 4, T 23 N., R 5 E, Willamette Meridian, said tract being more particularly described as follows:

Beginning at a monument being the Southeast corner of Block 18 in the Plat of Rainier Acres, King County, Washington; thence North 89 degrees 14 minutes 37 seconds West along the South line of Block 18, 13 and 12 for 1298.28 feet to the Southwest corner of Block 12; thence North 1 degree 01 minute East along the West line of said Block 12 for 469.57 feet; thence North 89 degrees 06 minutes 52 seconds West for 431.39 feet to the East margin of Renton Avenue; thence North 1 degree 01 minute East along the East margin of Renton Avenue for 709.54 feet to the Northwest corner of Lot 1, Block 8, said Plat of Rainier Acres; thence South 88 degrees 59 minutes East for 190.7 feet; thence South 1 degree 01 minutes West for 189.0 feet to the Southeast corner of said lot 1; thence South 88 degrees 59 minutes East for 1053.50 feet to the Southeast corner of Block 14 of said Plat; thence North 1 degree 01 minute East for 1625.17 feet to an intersection with the East and West center line of Section 9, T 23 N. Range 5 E, Willamette Meridian; thence South 88 degrees 50 minutes 13 seconds East along said East center of said Section 9, said point also being the West margin of Boundary Avenue in accordance with said Plat of Rainier Acres for 431.16 feet; thence South 0 degrees 10 minutes 36 seconds East along said West margin of Boundary Avenue for 2607.88 feet to the

true point of beginning; subject to an easement for power line right-of-way lying within the above described tract, the center line of the easement being described as follows: [5]

A strip of land 100 feet in width being 50 feet on each side of the following described center line;

Commencing at the $\frac{1}{4}$ corner common to Sections 9 and 16, T 23 N R, 5 E, Willamette Meridian; thence North 89 degrees 14 minutes 37 seconds West for 223.16 feet; thence North 4 degrees 53 minutes 48 seconds East for 30.08 feet to the true point of beginning; thence North 4 degrees 53 minutes 48 seconds East for 1294.06 feet; thence North 0 degrees 09 minutes 52 seconds West for 1317.53 feet to the North line of the Southwest quarter of said Section 9, containing 2,258,584 square feet or 51.850 acres.

ALSO: Beginning at a monument being the $\frac{1}{4}$ corner common to Sections 8 and 9, T 23 N, R, 5 E, Willamette Meridian; thence North 0 degrees 57 minutes 45 seconds East along the West line of said Section 9 for 995.10 feet to the Northwest corner of the South half of the North half of the Southwest quarter of the Northwest quarter of said Section 9; thence South 88 degrees 53 minutes 44 seconds East for 322.30 feet to the Northeast corner of the Southwest quarter of the Northwest quarter of the Southwest quarter of the Northwest quarter of said Section 9; thence North 0 degrees 49 minutes 15 seconds East along the West line of the East half of the Northwest quarter of the Southwest quarter of the Northwest quarter of said Section 9 and the West

line of the East half of the West half of the Northwest quarter of the Northwest quarter of said Section 9 for 1629.10 feet to an intersection with the South margin of the County Road; thence South 88 degrees 59 minutes 45 seconds East along said South margin for 318.27 feet to an intersection with the West line of the East half of the Southwest quarter of the Southwest quarter of Section 4, Township 23 N, Range 5 East, Willamette Meridian, produced in a straight line; thence North 0 degrees 41 minutes 44 seconds East along said West line for 1017.01 feet to the Southwest corner of the North half of the Northwest quarter of the Southwest quarter of the Southwest quarter of said Section 4; thence North 88 degrees 44 minutes 57 seconds West for 609.44 feet to the East margin of the County Road; thence North 0 degrees 31 minutes 09 seconds East, parallel to, and 30 feet East of the West line of said Section 4 for 550.06 feet; thence angle right 90 degrees on a course of South 89 degrees 28 minutes 51 seconds East for 235.0 feet; thence angle left 90 degrees on a course of North 0 degrees 31 minutes 09 seconds East for 100.0 feet; thence South 89 degrees 28 minutes 51 seconds East for 216.78 feet; thence North 0 degrees 31 minutes 09 seconds East for 477.61 feet; thence South 88 degrees 20 minutes 30 seconds East for 161.11 feet to an intersection with the West line of the Northeast quarter of the Northwest quarter of the Southwest quarter of said Section [5a] 4; thence North 0 degrees 41 minutes 44 seconds East for 512.80 feet to the North line of the Southwest

quarter of said Section 4; thence South 88 degrees 20 minutes 30 seconds East along the North line of said Southwest quarter for 1289.13 feet to the Northeast corner of the West half of the Northeast quarter of the Southwest quarter; thence South 1 degrees 03 minutes 02 seconds West along the East line of said West half of the Northeast quarter of the Southwest quarter and along the East line of the West half of the Southeast quarter of the Southwest quarter and it's production in a straight line 2647.31 feet to an intersection with the South margin of County Road; thence South 88 degrees 59 minutes 45 seconds East parallel to, and 30 feet South of the North line of the Northwest quarter of said Section 9, also being the South margin of County Road for 607.02 feet to an intersection with a point 30 feet West of the North and South center line of said Section 9; thence South 0 degrees 10 minutes 11 seconds East parallel to, and 30 feet West of said North and South center line of said Section 9 for 2631.28 feet to an intersection with the East and West center line of said Section 9; thence North 88 degrees 50 minutes 13 seconds West for 2568.17 feet to the point of beginning.

Subject to an easement for power-line right-of-way within the Northwest quarter of Section 9, the center line of easment being described as follows:

A strip of land 100 feet in width being 50 feet on each side of the following described center line:

Commencing at the 1/4 corner common to Sec-

tions 4 and 9, Township 23 N. Range 5 East Willamette Meridian, being monument #9; thence North 88 degrees 59 minutes 45 seconds West for 105.60 feet; thence South 0 degrees 09 minutes 52 seconds East for 30.0 feet being the true point of beginning; thence South 0 degrees 09 minutes 52 seconds East for 2631.06 feet to the South line of said Northwest quarter.

Also:

Subject to a right-of-way for State Road #2, (Sunset Highway) and being more particularly described as follows:

Commencing at the 1/4 corner common to Sections 4 and 9, T 23 N. Range 5 E, Willamette Meridian; thence South 0 degrees 10 minutes 11 seconds East for 30.0 feet; thence North 88 degrees 59 minutes 45 seconds West for 505.13 feet to the true point of beginning;

thence South 35 degrees 42 minutes West for 1669.97 feet; thence along the arc of a curve to the right having a radius of 439.51 feet and consuming an angle of 113 degrees 06 minutes for an arc distance of 867.58 feet; thence North 31 degrees 12 minutes West for 65.17 feet to an intersection with the West line of the East half of the West half of the West half of the Northwest quarter of said Section 9; thence [5b] North 0 degrees 49 minutes 15 seconds East for 113.16 feet; thence South 31 degrees 12 minutes East for 161.11 feet; thence along the arc of a curve to the left having a radius of 379.51 feet and consuming an angle of 113 degrees 06 minutes for an arc distance of 749.14

feet; thence North 35 degrees 42 minutes East for 1628.43 feet to an intersection with the South margin of County Road, said South margin being 30 feet South of the North line of the Northwest quarter of said Section 9; thence South 88 degrees 59 minutes 45 seconds East for 72.98 feet to the true point of beginning.

Containing 10,089,959 square feet or 229.774 acres, more or less.

Also: Lots 33, 34, and 35 in the Plat of Harries Garden Home Tract, King County, Washington, being more particularly described as follows:

Beginning at the Southeast corner of the Southwest quarter of the Northeast quarter, Section 8 T 23 N, R 5 E, Willamette Meridian, said point also being the Southeast corner of Lot 33 of said plat; thence North 0 degrees 56 minutes 36 seconds East for 100.0 feet; thence North 89 degrees 02 minutes 21 seconds West for 184.05 feet to the East Margin of State Highway No. 2 (Sunset Highway); thence following said East margin South 8 degrees 28 minutes 59 seconds West for 268.58 feet and along the arc of a curve to the left having a radius of 543.14 feet and consuming an angle of 3 degrees 50 minutes 45 seconds for an arc distance of 36.45 feet to the Southwest corner of Lot 35, said plat; thence south 89 degrees 42 minutes 01 seconds East for 222.72 feet; thence North 0 degrees 59 minutes 02 seconds East for 199.96 feet to the point of beginning, and containing 61,415 square feet or 1.410 acres.

The total above description includes 12,328,956

square feet or 283.034 acres, more or less, together with the improvements thereon, as shown on plat entitled "Land Being Acquired for Defense Housing Project at Renton, King County, Washington, Projects Wash-45058 and Wash-45134, from Property Line Map, Sievers & Duecy, Engineers, dated March, 1942", copy of which is attached to declaration of taking.

(Particularized property description omitted—Clerk.) [5c]

VII.

Simultaneously with the filing of this petition, Herbert Emmerich, *Commission* of the Federal Public Housing Authority of the United States, is causing to be filed in the Court and cause, on behalf of petitioner, a declaration of taking, pursuant to the provisions of the Act of February 26th, 1931 (46 Stat. 1421), wherein and whereby said land heretofore described is taken in full fee simple title, subject however, to a transmission line easement running northerly and southerly along the eastern side of the site; also subject to the right of way for State Road No. 2, known as Sunset Highway, as set *for* in the declaration of taking, on file herein, for the use and benefit of the United States as aforesaid, and with the filing of said declaration of taking petitioner is paying into the Registry of Court for the use of the persons entitled thereto, as the estimated just compensation for the taking of said land hereinbefore described, the sum of \$84,390.00.

Wherefore, *petition* prays judgment as follows:

1. That the Court ascertain and assess the value of the property herein sought to be taken and condemned, and of each and every separate estate or interest therein;

2. Adjudging that the public uses for which petitioner takes and condemns said land are necessary public uses of the petitioner, and that the uses to which said property is to be applied are uses authorized by law, and that all of said land taken is necessary thereto;

3. Vesting in the United States of America full fee simple title, subject, however, to a transmission line easement running northerly and southerly along the eastern side of the site; also subject to the right-of-way for State [6] Road No. 2, known as Sunset Highway, as set forth in the declaration of taking on file herein, and adjudging that said land shall be deemed to be condemned and taken for the use of the United States for the purposes and uses hereinbefore set forth, and further adjudging that the right to just compensation for the said land hereinbefore described be vested in the persons entitled thereto as their respective interests may appear and be established and adjudged herein, and that said compensation shall be ascertained and awarded in this proceeding and established by judgment herein, and a time fixed within which, and the terms upon which, the parties in possession shall be required to surrender possession to the petitioner, United States of America.

4. That all liens or encumbrances of record

against the property herein sought to be taken and condemned be satisfied out of the award to be made in this proceeding.

5. For such other and further relief as the Court deems meet and proper in the premises and as the nature of the case may require.

F. P. KEENAN

Special Assistant to the
Attorney General

FRANK PELLEGRINI

Special Attorney,
Department of Justice [7]

United States of America,
Western District of Washington,
Northern Division—ss.

F. P. Keenan, being first duly sworn, on oath deposes and says:

He is a Special Assistant to the Attorney General, and as such makes this affidavit for and on behalf of the United States, petitioner herein; he has read the foregoing petition, knows the contents thereof, and the same is true of his own knowledge except as to matters which are therein stated on his information or belief, and as to those matters he believes them to be true.

The source of affiant's information and the grounds for his belief are the official communications, records, files and documents received from the Attorney General of the United States and from the National Housing Agency.

F. P. KEENAN

Subscribed and sworn to before me this 16th day
of June, 1942.

[Seal]

C. R. FITZGERALD

Deputy Clerk, United States
District Court, Western
District of Washington

[Endorsed]: Filed June 16, 1942. [8]

[Title of District Court and Cause.]

DECLARATION OF TAKING

I. Herbert Emmerich, Commissioner of the Federal Public Housing Authority of the United States of America, do hereby declare that:

1. (a) The lands described in Schedule A attached, are hereby taken for the use of the United States under the authority of the Act of August 1, 1888, 25 Stat. 357 (U. S. C. Title 40, Sec. 257); the Act of February 26, 1931, 46 Stat. 1421 (U.S.C. Title 40, Secs. 258(a) to 258 (e); the Act of October 14, 1940 (Public No. 849, 76th Congress as amended, and Executive Order No. 9070 dated February 24, 1942, funds having been appropriated by the Act of May 24, 1941 (Public No. 73, 77th Congress);

(b) The public use for which said lands are taken is the provision of housing, pursuant to said Act of October 14, 1940, as amended.

2. A description of said lands sufficient for the

identification thereof is set forth in Schedule A, annexed, and made a part hereof.

3. The estate taken for said public use is the full fee simple title in and to said lands, subject to a transmission line easement running northerly and southerly along the eastern side of the site; also subject to the right-of-way for State Road #2, known as Sunset Highway, as shown on the plat entitled "Land Being Acquired for Defense Housing Project, Renton, King County, Washington, WASH-45058, and WASH-45134, dated May 25, 1942." [9]

4. A plan showing said lands is annexed, as Schedule B, and made a part hereof.

5. The sum of money estimated by me to be just compensation for said lands, including all buildings and improvements thereon, if any, all appurtenances thereto, and all interests therein, is set forth in Schedule A annexed hereto and made a part hereof. Said sum I herewith deposit in the registry of this Court to the use of the persons entitled thereto.

I am of the opinion that the ultimate award of compensation for the taking of said lands will be within any limits prescribed by law to be paid as the price therefor.

In witness whereof, I, Herbert Emmerich, Commissioner of Federal Public Housing Authority, thereunto duly authorized have signed this Declaration of Taking, acting as Commissioner of Federal Public Housing Authority, this 1st day of June,

1942, in the City of Washington, District of Columbia.

UNITED STATES OF AMERICA
[Signed] By HERBERT EMMERICH
Federal Public Housing
Commissioner [10]

SCHEDULE "A"

(Property description up to parcel 45 omitted)
—Clerk.

Parcel 45:

Being the land, together with the improvements thereon, as shown on the attached plat, marked Exhibit "B", containing 40.471 acres, more or less. Purported owner Julia U. Bonnar and King County.
Estimated value\$6,500.00

Parcel 46:

Being the land, together with the improvements thereon, as shown on the attached plat, marked Exhibit "B", containing 0.865 acres, more or less. Purported owner, Estate of James Albert Longbottom.
Estimated value\$ 50.00

Parcel 47:

Being the land, together with the improvements thereon, as shown on the attached plat, marked Exhibit "B", containing 1.624 acres more or less. Purported owner, Julia U. Bonnar. Estimated value \$ 350.00

Parcel 48:

Being the land, together with the improvements thereon, as shown on the attached plat, marked Exhibit "B", containing 0.831 acres, more or less. Purported owner, Clifford G. Morrison. Estimated value\$ 75.00

Parcel 49:

Being the land, together with the improvements thereon, as shown on the attached plat, marked Exhibit "B", containing 0.827 acres, more or less. Purported owner Joseph Plute, Jr. and Elina Plute. Estimated value\$5,100.00

Parcel 51:

Being the land, together with the improvements thereon, as shown on the attached plat, marked Exhibit "B", containing 0.911 acres, more or less. Purported owner Ewart Harris and Richard Harris. Estimated value\$1,025.00

Parcel 52:

Being the land, together with the improvements thereon, as shown on the attached plat, Marked Exhibit "B", containing 0.499 acres, more or less. Purported owner C. L. Dixon and Thomas Harries, Trustee. Estimated value\$ 550.00

Public streets:

All those portions of Sunset Highway (State Road No. 2), Fir Avenue, Summers Avenue, Center Avenue, Bile Street, Young Street and North Street, and the County Road, lying northerly of parcels 9, 8, 7, and 39, as shown on the attached plat within the area of the project site. Purported owner King County. Estimated Value....\$ 1.00

The total sum of money estimated by the acquiring authority to be just compensation for the aforesaid land in this proceeding and hereby taken is \$84,390.00.

[Endorsed]: Filed June 16, 1942. [11]

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision

No. 530

UNITED STATES OF AMERICA,
Petitioner,

v.

CERTAIN PARCELS OF LAND IN RENTON,
COUNTY OF KING, STATE OF WASH-
INGTON;

MIKE N. SARGENT and REBECCA SARGENT,
his wife;

* * * * *

PUGET SOUND POWER & LIGHT COMPANY,
a corporation,

Respondents.

NOTICE AND SUMMONS

The President of the United States of America,
To the Above Named Respondents:

Notice is hereby given to the above named re-
spondents, and to each of them, and also to the un-
known owners and all persons unknown having or
claiming an interest or estate in the property herein
described, or any portion thereof, that hereafter,
to-wit, on the 1st day of March, 1943, at the hour
of 10:00 o'clock A.M., or at such time thereafter to
which said hearing may be adjourned, in the Court-
room of the United States District Court for the

Western District of Washington, Northern Division, in the United States Courthouse in Seattle, Washington, and within the above named division and district, the above named petitioner will present to the Honorable Lloyd L. Black, Judge of the above entitled Court, the petition of the United States of America which has been filed in this cause in the office of the Clerk of the District Court, and that thereafter said petition will be brought on for hearing at such time and place as the said hearing may be by the Court at that time or times adjourned. [12]

The object of the petition filed herein is to condemn and appropriate all of the property hereinafter described to the use and purposes of the United States of America, and to acquire in the name of, and for the United States of America, title and ownership of the property hereinafter described and each particular part and parcel thereof for Defense Housing purposes.

Petitioner, by the allegations of its petition filed herein and through this proceeding, prays the Court that it find and decree that the contemplated use for which the property hereinafter described is sought to be appropriated is a public use and that the public interest requires the acquisition of the land hereinafter described, and that the condemnation and appropriation of the property hereinafter described is necessary for said public use, and petitioner has petitioned the Court that an order be entered herein directing the Marshal to summon a jury hereafter to be impaneled in order to ascer-

tain and determine the compensation to be made in money to the above named respondents, and each of them, and to all tenants, encumbrancers, and others interested in the property hereinafter described, insofar as the interest of each may appear.

Notice is further given to each and every person interested in said property, or any of it, or in the money deposited in the Registry of this Court as estimated just compensation for any of the property in the petition or in this notice described, or any sums that may hereafter be adjudged to be just compensation for said property, to be and appear before the above entitled Court on said 1st day of March, 1943.

The land so condemned and taken is a tract lying and being in the County of King, State of Washington, and more particularly described as follows:

(Property Description Omitted.)

—Clerk. [13]

The estate taken by the petitioner, United States of America, in and to the lands hereinabove described is the full fee simple title, subject to a transmission line easement running northerly and southerly along the eastern side of said land; also subject to the right of way for said Road No. 2, known as Sunset Highway. Petitioner has prayed that said property be decreed to be the property of the United States of America and that just compensation for the taking thereof be awarded to the persons entitled thereto.

This notice has been given and proceeding insti-

tuted by and with the authority of The Attorney General of the United States.

Witness the Honorable Lloyd L. Black, Judge of the United States District Court in and for the Western District of Washington, and the seal thereof. Dated at Seattle, Washington, this 22 day of January 1943.

[Seal] JUDSON W. SHORETT,
Clerk.

By E. NICHOLS,
Deputy.

F. P. KEENAN

Special Assistant to The Attorney General

HAROLD W. ANDERSON

Special Attorney

Department of Justice

[Endorsed]: Filed Jan. 22, 1943. [14]

[Title of District Court and Cause.]

APPEARANCE AND ANSWER OF PUGET
SOUND LIGHT & POWER COMPANY

Comes now Puget Sound Power & Light Company and in response to the notice and summons issued herein on the 22nd day of January, 1943, enters its appearance herein and alleges as follows:

I.

During all the times hereinafter mentioned this respondent was and is now a corporation duly or-

ganized and existing under the laws of the State of Massachusetts and authorized to do business and doing business in the State of Washington.

II.

For many years last past this respondent has been and is now engaged in the electric public-utility business within the State of Washington, owning and operating various hydro-and-steam electric generating plants, with transmission and distribution lines connected thereto, and by means thereof respondent supplies electric energy to a large part of the population living in nineteen counties in the western part of said state, and, in particular, to the residents of King County, Washington.

III.

Respondent is the owner of various electric transmission and distribution lines within and adjacent to the area described in the Declaration of Taking, Petition in Condemnation, and Judgment on Declaration of Taking, and appropriated by the United States [15] pursuant to these proceedings, which electric lines are located, some on public highways, for which respondent holds valid unexpired franchises duly granted by the proper public authorities, and some thereof located and maintained, with the consent of the owners, upon privately-owned land within the area of this condemnation.

IV.

By reason of the taking of the said land by the United States, the property and franchise rights

of this respondent will be interfered with and taken or damaged and by reason of the taking thereof its remaining electric public utility system will suffer damage; nothing has been paid to this respondent on account thereof or deposited in the registry of this court as compensation therefor.

Wherefore, respondent prays that the amount of just compensation to be paid to this respondent by the United States for the property of the respondent taken and damaged by these proceedings be ascertained herein, in the manner provided by law, and that it have judgment against the United States therefor, with interest as allowed by law.

HOLMAN, SPRAGUE &

ALLEN

Attorneys for Respondent,
Puget Sound Power & Light
Company. [16]

State of Washington,
County of King—ss.

C. F. Terrell, being first duly sworn, on oath deposes and says: That he is Vice President of Puget Sound Power & Light Company, a corporation, one of the respondents in the above entitled action; that he makes this verification by authority of and in its behalf; that he has read the foregoing Appearance and Answer of Puget Sound Power & Light Company, knows the contents thereof and believes the same to be true.

C. F. TERRELL

Subscribed and sworn to before me this 26th day of April, 1943.

[Seal] D. J. TORRANCE

Notary Public in and for the State of Washington,
residing at Seattle.

Copy Rec'd 4/26 - 43.

F. P. KEENAN.

[Endorsed]: Filed Apr. 26, 1943. [17]

[Title of District Court and Cause.]

STIPULATION

It Is Agreed between the United States of America, represented by Harold W. Anderson, Special Attorney, Department of Justice, and by the respondent, Puget Sound Power & Light Company, represented by Holman, Sprague & Allen, its attorneys, as follows:

1. Puget Sound Power & Light Company is an electric public utility operating several electric generating plants in Western Washington and an extensive inter-connected transmission system by means of which it distributes said electricity to the public generally in nineteen counties in the Northwestern part of the State, and said company is authorized to carry on such business within the State of Washington.

2. In the area taken by the Government in this proceeding, the Company owns and operates certain electric lines upon public roads under a franchise granted by the County Commissioners of King

County, Washington; it owns and operates other lines upon privately-owned land pursuant to easements granted by the owners of said land and duly recorded; other lines are located upon private property and operated without written easements but with the oral or tacit consent of the owners of such land. The franchise above mentioned will expire in 1953. A map showing the location of said lines is attached to this stipulation, marked Exhibit A, [18] and by this reference made a part hereof.

3. An easement has been granted to said Company by the United States of America acting by and through the Federal Public Housing Authority for the continued operation of the Company's electric line on that portion of Southeast 112th Street (otherwise known as County Road No. 431) located within the boundaries of the condemnation area, and no question of damages arises as to this line.

4. The amounts of damages which are at issue in this case are the following:

(a) Cost to remove distribution line located on privately-owned land and operated pursuant to written easement granted by the owners\$73.00

(b) Cost to remove distribution lines located at date of commencement of condemnation proceedings upon privately-owned land without written easements, but with the consent, either tacit or oral, of the owners..268.00

(c) Cost of removing a distribution line presently (at date of commencement of condemnation proceedings) operated on Bile

Street pursuant to franchise granted by the
County Commissioners of King County, Wash-
ington156.99

(d) Cost to rebuild new line in new loca-
tion outside of condemnation area to continue
service to customer located without the project
area408.98

5. The respondent contends that it is entitled to compensation for all of said items upon the basis above set forth, but the government contends that respondent is entitled to no damages whatever for items (b), (c) and (d), conceding only respondent's right to the sum of seventy-three dollars for item (a). The amounts set forth in all of said items are agreed upon, and no further evidence thereof need be introduced by either party.

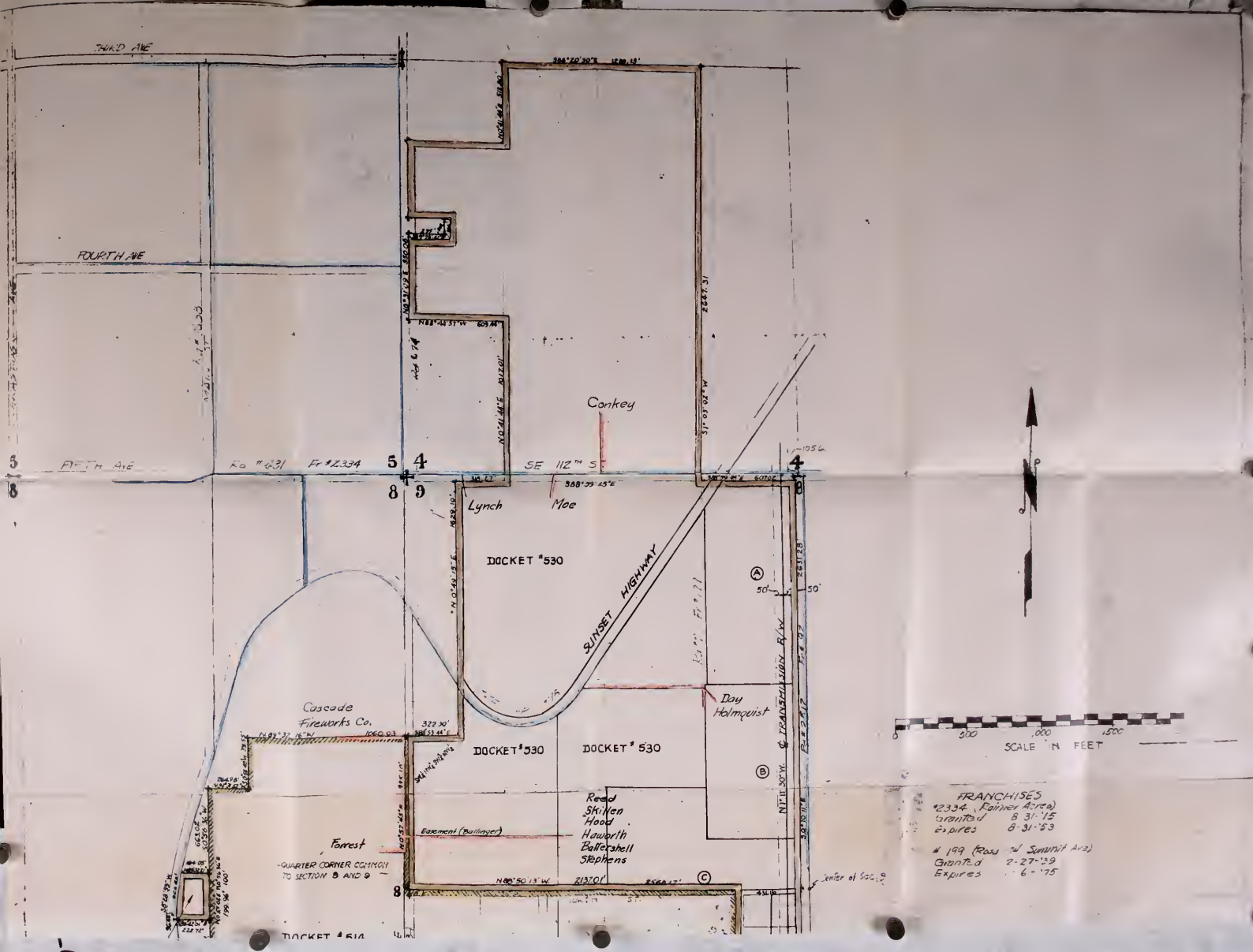
HAROLD W. ANDERSON

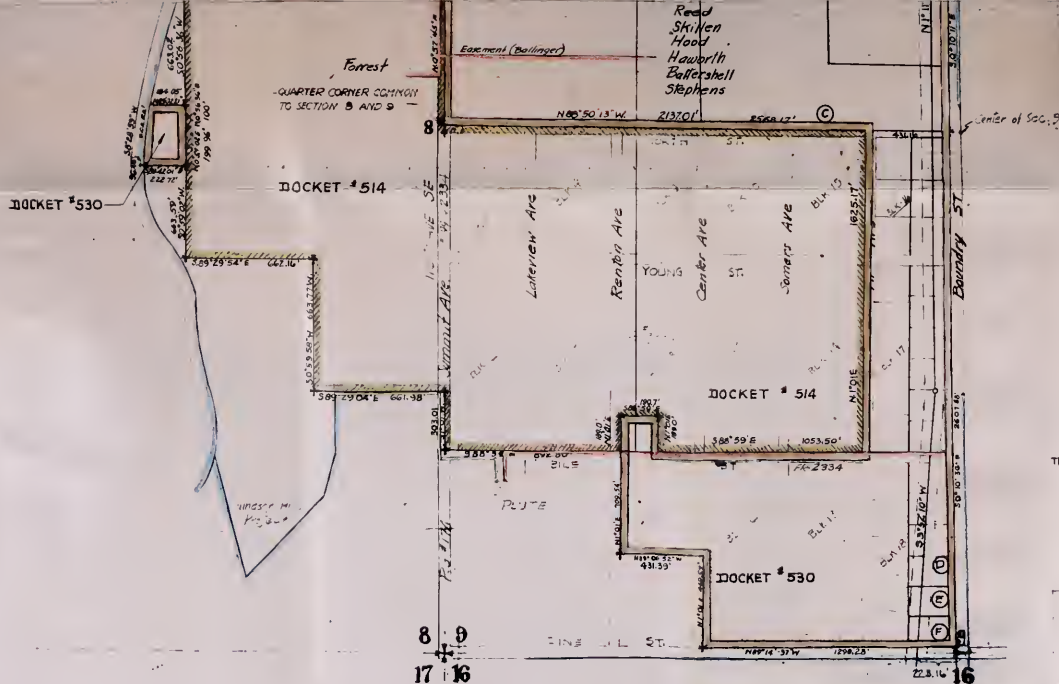
Special Attorney, Lands Divi-
sion, Department of Justice

HOLMAN, SPRAGUE &
ALLEN

Attorneys for Puget Sound
Power & Light Company.

[Endorsed]: Filed June 30, 1943. [19]





FRANCHISES
#2334 (Fairview Acres)
Granted 8-31-15
Expires 8-31-53

#199 (Rosa 7th Summit Ave)
Granted 2-27-39
Expires 1-6-75

LEGEND

FRANCHISES
#2334 (Fairview Acres)
Granted 8-31-15
Expires 8-31-53
#199 (Rosa 7th Summit Ave)
Granted 2-27-39
Expires 1-6-75

#514 #530

TRANSMISSION LINE EASEMENTS TO R.S.P. & L. Co.

GRANTOR

(A)
(B)
(C)
(D)
(E)
(F)

Mabel Petzer Terrell
C.A. Day et ux.
Anna Ruegg et vir
Julia O. Bonner et vir
James A. Longbottom et al
William Morrow

723 NR 5E 1/4 M.

LINE TO BE REMOVED OR RELOCATED
PROJECTS # WASH 45134 45058-45059
NEAR RENTON KING CO WASH.

PUGET SOUND POWER & LIGHT COMPANY

DATE 6-4-43

[Title of District Court and Cause.]

PETITIONER'S MOTION FOR NEW TRIAL

Comes Now the petitioner, United States of America, and moves for a new trial upon the following grounds:

1. Insufficiency of the evidence to justify the judgment of the Court.
2. Error in law occurring at the trial and excepted to at the time by the petitioner.

F. P. KEENAN

Special Assistant to The At-
torney General

HAROLD W. ANDERSON

Special Attorney
Department of Justice

Office and Post Office Address:

655 Skinner Building
Seattle, Washington

Received Jul - 2 1943. D. J. Holman, Sprague & Allen.

[Endorsed]: Filed July 2, 1943. [21]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL DENIED

Now on this 16th day of August, 1943, this cause comes on for hearing before the court, Harold W. Anderson, Special Attorney, Department of Justice, appearing for petitioner and Emory Hess, attorney

appearing for respondents, on motion of petitioner for new trial. Argument by Mr. Anderson for petitioner and argument by Mr. Hess for respondent Puget Sound Power & Light. Court denies motion for new trial and allows petitioner exception. Findings of Fact and Conclusions of Law to be presented later by both sides.

(Journal No. 32, page 150) [22]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Matter having come on for trial on June 30, 1943, petitioner, United States of America, being represented by F. P. Keenan, Special Assistant to the Attorney General, and Harold W. Anderson, Special Attorney, Department of Justice, respondent, Puget Sound Power and Light Company, a corporation, being represented by Holman, Sprague and Allen, and Emory E. Hess, its attorneys; a jury having been waived on motion of the petitioner and respondent, and the parties having filed a stipulation as to the facts and contentions of the respective parties, the Court being fully advised in the premises makes the following:

FINDINGS OF FACT

I.

That on June 16, 1942, the petitioner, United States of America, pursuant to Acts of Congress,

condemned and appropriated for the public use, to wit, to provide housing for persons engaged in national defense activities certain real property described in the Declaration of Taking and Petition in Condemnation on file herein; that included in said real property taken were certain public street and county road areas in addition to certain privately-owned lands. [23]

II.

That immediately prior to the filing of the Declaration of Taking herein, the respondent, Puget Sound Power and Light Company, a corporation, was the owner of a recorded written easement over privately-owned land on which it maintained an electric power service line; that said respondent, Puget Sound Power and Light Company, a corporation, maintained electric power transmission lines upon privately-owned land without written easements, but with the tacit or oral consent of the owners; that said respondent, Puget Sound Power and Light Company, a corporation, was the owner of a franchise granted by the County Commissioners of King County, State of Washington, to maintain an electric power distribution line on Bile street, a public street, within the area condemned, which franchise was being exercised by said respondent to maintain its power poles and lines in said street area.

III.

That respondent, Puget Sound Power and Light Company, a corporation, removed its electric power

poles and lines from said privately-owned lands and said public street, all within the area condemned, and on January 22, 1943, rebuilt one of said lines, formerly located on said public street where said respondent held a franchise, in a new location outside of the condemnation area to continue service to a customer located outside the condemnation area.

IV.

That by stipulation filed in the cause, the petitioner and said respondent, Puget Sound Power and Light Company, a corporation, agreed that the matters and amounts of damages which are at issue in this cause are the following:

(a) Cost to remove distribution line located on privately-owned land and operated pursuant to written easement granted by the owners\$73.00

[24]

(b) Cost to remove distribution lines located at date of commencement of condemnation proceedings upon privately-owned land without written easements, but with the consent, either tacit or oral, of the owners..\$268.00

(c) Cost of removing a distribution line presently (at date of commencement of condemnation proceedings) operated on Bile Street pursuant to franchise granted by County Commissioners of King County, Washington\$156.99

(d) Cost to rebuild new line in new location outside of condemnation area to continue

service to customer located without the project
area\$408.98

That by said stipulation, the petitioner and respondent agreed that respondent is entitled to compensation in the sum of Seventy-three Dollars (\$73.00) for its recorded written easement as set forth under (a) above, the cost to remove the distribution line from said easement area being agreed upon as the measure of compensation. That by said stipulation, the respondent contends that it is entitled to compensation as set forth under (b), (c) and (d) above, and the petitioner contends that respondent is not entitled to such compensation. By said stipulation, the petitioner and respondent have agreed upon the sums stated as the measure of compensation in the event it is adjudged that the respondent is entitled to recover compensation.

From the foregoing findings of fact, the Court makes the following:

CONCLUSIONS OF LAW

I.

The Court has jurisdiction of the parties and subject matter herein.

II.

That the respondent, Puget Sound Power and Light Company, a corporation, is entitled to recover fair, just and reasonable compensation for the taking of its recorded written easement in the sum of Seventy-three Dollars (\$73.00) as stipulated to by the petitioner and respondent. [25]

III.

That the respondent, Puget Sound Power and Light Company, a corporation, is entitled to recover fair, just and reasonable compensation in the sum of Four Hundred Eight and 98/100 Dollars (\$408.98) for being put to the burden and expense of rebuilding a new electric power distribution line outside of the area condemned to continue service to a customer located outside the area condemned, said respondent having formerly served said customer by its electric power distribution line operated in a public street under franchise.

IV.

That said respondent, Puget Sound Power and Light Company, a corporation, is not entitled to recover any compensation for its expense in the sum of Two Hundred Sixty-eight Dollars (\$268.00) in removing its electric power distribution lines from privately-owned land where it maintained said lines by tacit or oral consent of the owners of said land.

V.

That said respondent, Puget Sound Power and Light Company, a corporation, is not entitled to recover any compensation for its expense in the sum of One Hundred Fifty-six and 99/100 Dollars (\$156.99) in removing its electric power distribution poles and lines from a public street where said poles and lines were being operated under franchise.

VI.

That the payment of the aforesaid sum of Sev-

enty-three Dollars (\$73.00), without interest, and the payment of the aforesaid sum of Four Hundred Eight and 98/100 Dollars (\$408.98), together with interest thereon at the rate of six percent (6%) per annum from January 22, 1943, until paid into the Registry of the Court, shall constitute full payment of all claims against the United States of [26] America and the final award of just compensation in favor of the said respondent, Puget Sound Power and Light Company, a corporation, in connection with this cause.

Petitioner excepts to the making of Conclusion of Law, No. III, and its exception is allowed.

Respondent, Puget Sound Power and Light Company, a corporation, excepts to the making of Conclusions of Law, No. IV and No. V, and its exception is allowed.

Done In Open Court this 28 day of August, 1943.

CHARLES H. LEAVY

United States District Judge

Presented by:

HAROLD W. ANDERSON

Special Attorney

Department of Justice

[Endorsed]: Lodged in the United States District Court, Western District of Washington, North-Northern Division. Aug. 25, 1943. Judson W. Clerk. By M. Miller, Deputy.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Sep. 2, 1943. Judson W. Shorett, Clerk. By H. M. White, Deputy. [27]

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision

No. 530

UNITED STATES OF AMERICA,

Petitioner,

vs.

CERTAIN PARCELS OF LAND IN RENTON,
COUNTY OF KING, STATE OF WASH-
INGTON; MIKE N. SARGENT, et ux, et al.,
PUGET SOUND POWER AND LIGHT COM-
PANY, a corporation,

Respondents.

JUDGMENT AWARDING COMPENSATION
DIRECTING FUNDS TO BE PAID BY
THE CLERK AND FOR A DEFICIENCY
JUDGMENT

This cause coming on for trial the 30th day of June, 1943, as to certain claims for compensation of the respondent, Puget Sound Power and Light Company, a corporation; the petitioner, United States of America, being represented by F. P. Keenan, Special Assistant to the Attorney General, and Harold W. Anderson, Special Attorney, Department of Justice; the respondent, Puget Sound Power and Light Company, being represented by Holman, Sprague and Allen, and Emory E. Hess, its attorneys; a jury having been waived on motion of the petitioner and said respondent, and the Court

having considered the stipulation of the parties and the records and files herein, and having heard and considered the arguments of counsel, and being fully advised in the premises, and the Court having heretofore made its findings of fact and conclusions of law.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that respondent, Puget Sound Power and Light Company, a corporation, have and recover judgment against the petitioner herein in the sum of Seventy-three Dollars (\$73.00), without interest, as fair, just and reasonable compensation for the taking of said respondent's property consisting of a recorded written easement, of which sum the Clerk of this Court is hereby directed to pay to Puget Sound Power and Light Company, a corporation, the sum of Eight Dollars [28](\$8.00) each out of the deposits of estimated just compensation heretofore made and now remaining in the Registry of the Court for Parcel 32 and Parcel 34, which said parcels were encumbered with said easement, and a deficiency judgment is hereby entered against the petitioner herein in the sum of Fifty-seven Dollars (\$57.00), said deficiency judgment being included in said Seventy-three Dollar (\$73.00) judgment, and

It Is Further Ordered, Adjudged and Decreed that respondent, Puget Sound Power and Light Company, a corporation, have and recover judgment against petitioner herein in the sum of Four Hundred Eight and 98/100 Dollars (\$408.98), together with interest thereon at the rate of six per-

cent (6%) per annum from January 22, 1943, until paid into the Registry of this Court.

To the entry of judgment in favor of the respondent, Puget Sound Power and Light Company, in the sum of Four Hundred Eight and 98/100 Dollars (\$408.98), the petitioner excepts and said exception is allowed.

To the refusal of the Court to enter judgment in its favor in the additional sums of Two Hundred Sixty-eight Dollars (\$268.00) and One Hundred Fifty-six and 99/100 Dollars (\$156.99), the respondent, Puget Sound Power and Light Company, a corporation, excepts and said exception is allowed.

Done in Open Court this 28 day of August, 1943.

CHARLES H. LEAVY

United States District Judge

Presented by:

HAROLD W. ANDERSON

Special Attorney Department of Justice

[Endorsed]: Lodged in the United States District Court, Western District of Washington, Northern Division. Aug. 25 1943. Judson W. Shorett, Clerk. By M. Miller, Deputy.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sep. 2, 1943. Judson W. Shorett, Clerk. By H. M. White, Deputy. [29]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the District Court of the United States for the Western District of Washington, Northern Division, and

To Puget Sound Power and Light Company, a corporation, and Holman, Sprague and Allen and Emory E. Hess, its attorneys:

Notice Is Hereby Given that the United States of America, petitioner in the above-entitled action, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from that portion of the judgment designated as "Judgment Awarding Compensation Directing Funds to be Paid by the Clerk and for a Deficiency Judgment" signed by the Court on August 28, 1943, and entered September 2, 1943, in the above entitled action, which awarded judgment to the respondent, Puget Sound Power and Light Company, a corporation, in the sum of Four Hundred Eight and 98/100 Dollars (\$408.98), together with interest thereon.

Dated at Seattle, Washington, this 13th day of
November, 1943

NORMAN M. LITTELL

Assistant Attorney General

F. P. KEENAN

Special Assistant to the At-
torney General

HAROLD W. ANDERSON

Special Attorney Department
ment of Justice

Attorneys for the United
States of America

Office and Post Office Address:

Department of Justice

Washington 25, D. C.

or

655 Skinner Building

Seattle 1, Washington

[Endorsed]: Filed Nov. 13, 1943. [30]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

1. The District Court erred in rendering that part of the judgment which awarded to the Puget Sound Power and Light Company recovery against the United States in the sum of Four Hundred Eight and 98/100 Dollars (\$408.98) together with interest thereon at the rate of six percent per an-

num from January 22, 1943, until paid into the Registry of the Court.

2. The District Court erred in holding that as to the cost to rebuild new line in new location outside the condemnation area to continue service to a customer located outside the condemnation area the Puget Sound Power and Light Company was entitled to recover from the United States, whether such recovery be rested upon grounds of taking of property, taking of franchise, relocation damages, loss of franchise, severance damages or on the provision of the constitution of the State of Washington (Article 1, Section 16) here inapplicable [31] which requires compensation for property "taken or damaged."

NORMAN M. LITTELL

Assistant Attorney General

FRANK P. KEENAN

Special Assistant to the At-
torney General

Seattle, Washington

VERNON L. WILKINSON

Attorney, Department of Jus-
tice,

Washington, D. C.

LAWRENCE VOLD

Attorney, Department of Jus-
tice,

Washington, D. C.

Received Dec. 11, 1943

HOLMAN, SPRAGUE & ALLEN

[Endorsed]: Filed Dec. 11, 1943. [32]

[Title of District Court and Cause.]

DESIGNATION OF THE CONTENTS OF THE
RECORD ON APPEAL

Comes now the United States of America, appellant in the above entitled case, and designates the following for inclusion in the record on appeal:

1. The petition filed June 16, 1942, omitting from the title of the same the enumeration of the many individual defendants listed between the name Mike N. Sargent, near the beginning, and the name City of Renton, near the end of this long list of defendants; also omitting from the paragraph numbered VI of the petition the particularized description of the property taken; also omitting the attached exhibits.

2. The declaration of taking filed June 16, 1942.

3. That portion of Schedule "A" attached to the declaration of taking which begins with description of Parcel 45 and including therein from that point to the end of Schedule "A".

4. The notice and summons filed January 22, 1943, omitting therefrom the names of all named defendants except Puget Sound Power and Light Company and omitting also all of the detailed description of the property. [33]

5. The appearance and answer of the Puget Sound Power and Light Company filed April 26, 1943.

6. Stipulation filed June 30, 1943, together with the map attached thereto which is marked Exhibit "A" and referred to therein.

7. Petitioner's motion for new trial, filed July 2, 1943, and journal entry of August 16, 1943, showing denial thereof.

8. Findings of fact and conclusions of law filed September 2, 1943.

9. Judgment filed September 2, 1943.

10. Notice of appeal with its date of filing, filed November 13, 1943.

11. The statement of points on which appellant intends to rely.

12. This designation of the contents of the record on appeal.

Respectfully submitted,

NORMAN M. LITTELL

Assistant Attorney General

FRANK P. KEENAN

Special Assistant to the At-
torney General

Seattle, Washington

VERNON L. WILKINSON

Attorney, Department of Jus-
tice,

Washington, D. C.

LAWRENCE VOLD

Attorney, Department of Jus-
tice,

Washington, D. C.

Received Dec. 11, 1943.

HOLMAN, SPRAGUE & ALLEN

[Endorsed]: Filed Dec. 11, 1943. [34]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Judson W. Shorett, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered 1 to 34, inclusive, is a full, true and complete copy of so much of the record papers and other proceedings in the above and foregoing entitled cause as is required by Designation of Counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, and that the same constitute the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to wit: [35]

Clerk's fees (Act of February 11, 1925) for making record, certificate or return, 148 folios at 05c.....	\$ 7.40
Appeal fee (Sec. 5 of Act).....	5.00

Puget Sound Power and Light Co. 47

Certificate of Clerk to Transcript of Record.... .50

Total\$12.90

I further certify that the foregoing fees have not been paid to me for the reason that the appeal is being prosecuted by the United States of America.

In witness whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 30th day of December, 1943.

JUDSON W. SHORETT,

Clerk

[Seal] By PERCY MADDUX

Deputy [36]

[Endorsed]: No. 10654. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Puget Sound Power and Light Company, a Corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed January 4, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit

No. 10654

UNITED STATES OF AMERICA,

Petitioner,

vs.

CERTAIN PARCELS OF LAND IN RENTON,
KING COUNTY, WASHINGTON, MIKE N.
SARGENT, et al., PUGET SOUND POWER
AND LIGHT COMPANY, a corporation,
Defendants.

CONCISE STATEMENT OF POINTS UPON
WHICH APPELLANT INTENDS TO
RELY ON APPEAL

1. The District Court erred in rendering that part of the judgment which awarded to the Puget Sound Power and Light Company recovery against the United States in the sum of Four Hundred eight and 98/100 Dollars (\$408.98) together with interest thereon at the rate of six percent per annum from January 22, 1943, until paid into the Registry of the Court.

2. The District Court erred in holding that as to the cost to rebuild new line in new location outside the condemnation area to continue service to a customer located outside the condemnation area the Puget Sound Power and Light Company was entitled to recover from the United States, whether such recovery be rested upon grounds of taking of

property, taking of franchise, relocation damages, loss of franchise, severance damages or on the provision of the constitution of the State of Washington (Article 1, Section 16) here inapplicable which requires compensation for property "taken or damaged."

NORMAN M. LITTELL

Assistant Attorney General

F. P. KEENAN

Special Assistant to the At-
torney General

Seattle, Washington

VERNON L. WILKINSON

Attorney, Department of Jus-
tice,

Washington, D. C.

LAWRENCE VOLD

Attorney, Department of Jus-
tice,

Washington, D. C.

[Endorsed]: Filed Jan. 3, 1944. Paul P.
O'Brien, Clerk.

